

REMARKS

Favorable consideration and allowance of the claims of the present application are respectfully requested.

In the present Official Action, now made FINAL, Claims 1, 2, 4, 6-10, 12-14, 17-21 and 23-28 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Ishiyama et al. (US Patent Pub. US 2005/0102415) (“Ishiyama”).

Further in the Office Action, Claims 1, 2, 4, 6-10, 12-14, 17-21, and 23-28 34 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama in view of the newly cited reference to Zhu et al. (US Patent Pub. US 2003/0167339) (“Zhu “). As Zhu was cited for the first time in the present Office Action, it is for this reason that reconsideration under 37 C.F.R. §1.116 is respectfully requested.

With respect to further rejections indicated, Claims 3 and 20 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama in view of Zhu and further in view of Ito et al. (US Patent Pub. US 2003/0036921)(“Ito”).

With respect to further rejections indicated, Claims 5 and 22 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama in view of Zhu and further in view of “Official Notice”.

With respect to further rejections indicated, Claim 11 is being rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama in view of Zhu and further in view of O’Brien et al. (US Patent No. US 2003/0036921) (“O’Brien”).

With respect to further rejections indicated, Claims 15, 16, 29 and 30 are being rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama in view of Zhu and further in view of Frengut et al. (US Patent No. US 2002/0046099) (“Frengut”).

In response, applicants further amend Claims 1 and 18 to set forth with more particularity the invention and particularly, to clarify that the step of automatically monitoring the communications network for determining compliance of service-level guarantees. Claim 1 is being amended herein to include subject matters of Claim 10 in part, and Claim 13, now cancelled herein. Similarly, Claim 18 is being amended with subject matter of Claim 27, in part. Claim 1 (and 18) as amended, now set forth the following:

A method implemented by a computing device for real-time dynamic switching between a first service provider providing a Web-based service for users at a user's computer device over a communications network and a second service provider adapted for providing said service for users at a user's computer device, said method comprising the steps of:

automatically monitoring said communications network for determining compliance of service-level guarantees by said first service provider at said user's computer device, said monitoring including accessing internal functioning of a service that is currently in use; and,

upon determining non-compliance of said service-level guarantees, locating a second service provider for providing said service according to said service-level guarantees;

replicating state information associated with said user's use of said service provided by said first service provider at said user's computer device;

terminating provision of said service provided by said first service provider; and
switching service provision to said user's computer device from said second service provided

over said communications network; and,

migrating said state information maintained up to the time of switching to said service provided by said second service provider, wherein the switching occurs in a manner substantially transparent to a user, wherein said monitoring further including correlating criteria on which said switching service provision can be performed including one or more of: the relative prevalence of advertisements or SPAM, the relative usability of a user interface provided at computer device, the relative cost of the service provided by said second service provider as compared to a cost of the service provided by first service provider, a relative cognitive load of a user, and, a relative security of said service provided by said second service as compared to the service provided by first service provider.

Respectfully, no new matter is being entered by this amendment as full support for the monitoring step including accessing internal functioning of a service that is currently in use is found in the present specification, e.g., paragraphs [0014], [0015] describing Web services in the context of the present invention, and other service-level monitoring instrumentation at paragraph [0022] and for an example, paragraph [0018].

Moreover, contrary to the Examiner's reasoning, Ishiyama's teaching of a Router simply does not perform the monitoring functions including accessing internal functioning of a service and correlating criteria on which said switching service provision can be performed as now claimed in amended Claims 1 and 18. Nothing in Ishiyama, nor the additional prior art cited, teaches these features.

While the Examiner alleges Ishiyama at page 5, paragraph 64 and page 6, paragraph [0082] as providing this teaching, respectfully, this teaching does not rise to the level or import

of the recitations added in Claims 1 and 18. In fact, these Ishiyama passages are only relevant and pertain to the remaining elements in Claim 10 and Claim 27 as amended. Moreover, with respect to rejection of Claim 13 lodged by the Examiner, applicants' respectfully submit that the subject matter of canceled Claim 13, now in amended Claims 1 and 18, is neither taught nor suggested by Ishiyama whether taken alone or in combination with the other prior art cited.

Claim 1 and 18 now recites (from canceled Claim 13) further switching criterion, i.e., service level compliance based on the relative prevalence of advertisements or SPAM, the relative usability of a user interface provided at computer device and, a relative cognitive load of a user. In fact, applicants respectfully fail to see any teaching in Ishiyama in this regard, i.e., Ishiyama is completely silent on all of those advanced service level compliance criteria removed from Claims 13 and 27, as amended, because the routers as taught in Ishiyama have no access to anything that correlates with them.

In view of the foregoing, the Examiner is respectfully requested to withdraw the rejection of Claims 1 and 18 both under 35 U.S.C. §§102(e) and 103(a),

With respect to rejection of all dependent Claims 2-17 and 19-30, under 35 U.S.C. §103(a) as allegedly unpatentable over Ishiyama whether taken alone or in view of further prior art, applicants respectfully disagree in view of the arguments made herein, and, further in view of their respective dependencies.

Thus, in view of the foregoing, the Examiner is respectfully requested to withdraw the rejections of Claims 1 and 18 under 35 U.S.C. §102(e) and, additionally, withdraw the rejections of all remaining Claims under 35 U.S.C. §103(a).

In view of the foregoing, this application is now believed to be in condition for

allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, it is respectfully requested that he call applicant's attorney at (516) 742-4343.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Fischman", with a stylized flourish at the end.

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